

Assembly Bill 1797 (Harman)

Conflicts: disclosure and recusal procedures

Version: As amended, April 23, 2002

Status: Assembly Appropriations

Background

At the Commission's March 14, 2002 hearing, Assemblyman Harman requested the Commission's sponsorship of AB 1797. The Commission declined to sponsor the bill, but directed staff to work with the author's office as the bill makes its way through the legislative process.

AB 1797 passed the Assembly Elections Committee April 16, 2002 by a 5-0 vote. The League of California Cities testified in favor of the bill. A rural water board opposed the bill citing the necessity for public officials to testify on behalf of matters that affect them as a member of the public. The author has indicated he will take amendments to resolve this concern.

Since the March 14, 2002 Commission hearing, staff has been in contact with Assemblyman Harman's office to discuss the Commission's concerns with AB 1797. Amendments were made, but these do not resolve the Commission's concerns. We are advised that the author's office will submit additional revisions based upon issues raised at the Commission hearing and input from the League of California Cities. As of the date of this memo those amendments have not yet been submitted to Legislative Counsel.

Summary of Bill

Assembly Bill 1797 (Harman) addresses the manner of disqualification a public official must take when they have a conflict of interest or a potential conflict of interest. It would require the official to publicly identify the nature of the conflict of interest, recuse himself or herself, and leave the room until after the completion of discussion on the matter.

Existing Law and Regulations

Under existing law, a public official is already prohibited from taking part in governmental decisions in which he or she has a financial interest.¹ For this reason, the bill's provision requiring a public official to recuse himself or herself restates existing law.

¹ §87100 provides: "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

Subdivisions (b) and (c) of Commission Regulation 18702.1 set forth the obligations of a public official with a conflict of interest in a governmental decision:

“(b) When an official with a disqualifying conflict of interest abstains from making a governmental decision in an open session of the agency and the official remains on the dais or in his or her designated seat during deliberations of the governmental decision in which he or she is disqualified, his or her presence shall not be counted toward achieving a quorum.

(c) During a closed meeting of the agency, a disqualified official shall not be present when the decision is considered or obtain or review a recording or any non-public information regarding the governmental decision.”

The Commission’s comment to this Regulation provides: “Nothing in this section authorizes or prohibits an agency by local rule or custom from requiring a disqualified member to step down from the dais and/or leave the chambers.”

In addition, Regulation 18702.1, provides for permissive disclosure in the last sentence of subsection (a)(5):

“When the determination not to act occurs because of the official’s financial interest, the official’s determination may be accompanied by an oral or written disclosure of the financial interest.” (Emphasis added.)

History

In October 2000, the Commission considered amendments to Regulation 18702.1, a regulation that, at that time, mandated disclosure of disqualifying financial interests as provided for in this bill. The Commission voted 4-1 to reject mandatory disclosure in favor of the permissive disclosure contained in the prior paragraph.

Discussion and Policy Considerations

In addition to the fact that this statute reverses the October 2000 decision of the Commission, staff continues to have other concerns that were expressed to the Commission at the March 14th hearing including:

This measure proposes two substantive changes to existing law: 1) a requirement that a public official with a disqualifying conflict of interest disclose the nature of his or her financial interest; and 2) that the public official leave the room during any discussion related to his or her financial interest. As currently written the provisions of these bills would apply to both public meetings and the more routine daily decision making of the public officials set forth in §87200. The author has expressed his intention to make this applicable to public meetings only and Commission staff has been advised that the bill will be amended accordingly.

Subsection (c) requiring public officials to leave the room is problematic because individuals would not be provided an opportunity to testify as a member of the public. The author has expressed his intention to create an exception to allow public officials to testify as a member of the public.

The Elections Committee pointed out another concern that the bill, as drafted, would require the public official to publicly disclose the nature of a conflict of interest, even if they were not planning to attend the meeting. The author is seeking language to create an exemption when public officials are not present for public meetings.

The Enforcement Division has expressed serious concern about this bill. The fundamental policy question is whether Commission resources would best be spent investigating complaints concerning the manner of disqualification or investigating those more serious violations in which public officials voted when a conflict of interest existed. Staff believes this bill could divert the Commission's resources away from investigations of more serious offenses of the Act.

Staff Recommendation: Based upon enforcement concerns, staff recommends an oppose position.